

PATENT COOPERATION TREATY

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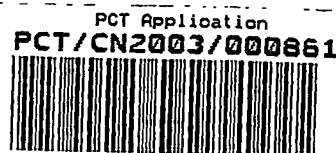
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INTERNATIONAL PRELIMINARY REPORT ON PATE
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference PF030071PCT		FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/CN03/00861	International filing date (day/month/year) 15.October 2003 (15.10.03)	Priority date (day/month/year)	
International Patent Classification (IPC) or national classification and IPC IPC ⁸ C12N7/01 (2006.01)i			
Applicant AGTC GENE TECHNOLOGY COMPANY LTD et al			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>3</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic _____), containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 01.December 2004 (01.12.04)		Date of completion of this report 20.February 2006 (20.02.06)	
Name and mailing address of the IPEA/CN The State Intellectual Property Office, the P.R.China, 6 Xitucheng Rd., Jimen Bridge, Haidian District, Beijing, China 100088		Authorized officer PAN, Aiqun	
Facsimile No. 86-10-62019451		Telephone No. 86-10-62085349	

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/CN03/00861

Box No. I Basis of the report

1. With regard to the language, this report is based on:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rules 12.3(a) and 23.1(b))
- ☐ publication of the international application (Rule 12.4(a))
- ☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☒ the international application as originally filed/furnished
- ☐ the description: _____ as originally filed/furnished
- pages _____
- pages * _____ received by this Authority on _____
- pages * _____ received by this Authority on _____
- ☐ the claims: _____ as originally filed/furnished
- pages _____
- pages * _____ as amended (together with any statement) under Article 19
- pages * _____ received by this Authority on _____
- pages * _____ received by this Authority on _____
- ☐ the drawings: _____ as originally filed/furnished
- pages _____
- pages * _____ received by this Authority on _____
- pages * _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/CN03/00861**Box No. V** Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement:

Novelty (N)

Claims 1-10 YES
Claims _____ NO

Inventive step (IS)

Claims 1-10 YES
Claims _____ NO

Industrial applicability (IA)

Claims 1-10 YES
Claims _____ NO

2. Citations and explanations (Rule 70.7)

Novelty:

Document 1 (CN1234878A) disclosed a method of preparing the recombinant herpes simplex virus (HSV1-rc) loaded with the gene of 2-type adeno-associated virus (AAV-2) rep-cap, and rAAV virus produced by a method as above; Said method comprises the following steps: the recombinant DNA technique is used to insert rep-cap into genome of HSV-1, which is used to cotransfect the HSV1 sensitive cell using liposomes to generate HSV1 stably carrying rep-cap. Said recombinant herpes can be used to prepare large amounts of rAAV(See the specification).

Document 2(WO0017377) disclosed a recombinant herpes simplex virus comprising adeno-associated virus rep and cap coding sequences (See the specification) .

None of Claims 1-10 of the present invention is disclosed in Document 1 or 2. So they have novelty under PCT33 (2).

Inventive step:

It is obvious that not all the technical features in claims 1-10 are disclosed by D1 or D2, and further the technical solutions claimed are not obvious to a person skilled on the basis of D1, D2 or their combination. Thus, claims 1-10 have inventive step under PCT Article 33(3).

Utility:

The invention of the claims 1-10 can be made or used in the industry. So they have industrial applicability under PCT 33(4).